

DATE: March 24, 2003

FILE REF: 4500

TO: Natural Resources Board Members

FROM: Scott Hassett, Secretary

SUBJECT: New Source Performance Standards for Electric Utility Boilers

On March 7, 2003 I sent you a memo (copy attached) to alert you to the potential for litigation at the federal level involving the New Source Performance Standards (NSPS) for emissions from electric utility boilers because the United States Environmental Protection Agency (EPA) has not complied with a requirement in the Clean Air Act to conduct a review of these standards at least once every 8 years. The importance of updating the NSPS for utilities has become especially important now that EPA has changed the New Source Review (NSR) program. Under this program, new sources of air pollution are required to utilize state-of-the-art methods to control emissions.

In conducting a review of control alternatives under the NSR program, sources are frequently required to control emissions beyond levels that exist in environmental standards, such as NSPS, because such standards are out of date and not in line with current technology. Because EPA has relaxed the applicability requirements in the NSR program, it is imperative that underlying standards, such as NSPS, are frequently reviewed and kept up to date.

Air Program staff have compared the existing NSPS to control requirements in recently issued NSR permits for coal fired utility boilers across the United States. The table that follows this paragraph summarizes the basis for their conclusion that the existing NSPS is not reflective of the technology advancements that form the basis for recently issued NSR permits. Although EPA updated NSPS requirements for nitrogen oxides (NOx) less than 8 years ago, control technology has advanced to the point where that update does not measure up to what is feasible.

Pollutant	NSPS requirement (lb/MBtu)	NSR requirement (lb/MBtu)	Difference (Tons / year for a 500 MegaWatt Power Plant)
Particulate Matter	0.03	0.011	142
Sulfur Dioxide	0.60	0.15	3,366
Nitrogen Oxides	0.50	0.01	3,665

In response to this situation, on February 20, 2003, New York, Connecticut, Maine, Massachusetts, New Jersey, Rhode Island, and Washington filed a notice of their intent to sue EPA in federal court to compel EPA to conduct the required review. In addition to requiring EPA to update existing standards for sulfur dioxide (SO₂) and particulate matter (PM), these 7 states intend to use this action to request that EPA also include carbon dioxide (CO₂) as a regulated pollutant under the NSPS for electric utility boilers. These 7 states are not pursuing action on NOx emission standards since EPA updated the NSPS less than 8 years ago.

The Clean Air Act Task Force was briefed on this situation on March 13th, and the possibility of Wisconsin filing a notice of intent to sue EPA to review the existing NSPS was mentioned. The Task Force was also advised that I would be providing you additional information on this topic prior to the March Board meeting. While updated emission limits for PM, SO₂ and NOx will help meet air quality standards for ozone in Wisconsin, the issue with respect to CO₂ emissions is more complicated because Wisconsin (unlike the Northeastern states) has not yet developed a state policy on global climate change.

Given the complexity of this matter, I've asked agency staff to continue a dialogue with appropriate stakeholders to determine if there is a consensus approach for dealing with issues surrounding PM, SO₂, NOx and CO₂ emissions from new power plants. If you have any questions about this memo, please contact Jay Hochmuth at 608-267-9521 or Lloyd Eagan at 608-266-0603.

DATE: March 7, 2003
TO: Natural Resources Board Members
FROM: Scott Hassett - Secretary
SUBJECT: New Source Performance Standards for Electric Utility Boilers

FILE REF: 1500

I'd like to alert you to the potential for litigation at the federal level involving the New Source Performance Standards (NSPS) for emissions from electric utility boilers. The United States Environmental Protection Agency (EPA) has failed to comply with a requirement in the Clean Air Act to conduct a review of these standards at least once every 8 years. The NSPS for electric utilities play an important role in facilitating attainment of the federal ozone standards in eastern Wisconsin and other metropolitan areas throughout the country with elevated ozone levels.

In response to this situation, on February 20, 2003, New York, Connecticut, Maine, Massachusetts, New Jersey, Rhode Island, and Washington filed a notice of their intent to sue EPA in federal court to compel EPA to conduct the required review. In addition to requiring EPA to update existing standards for sulfur dioxide and particulate matter, these 7 states intend to use this action to request that EPA also list carbon dioxide, which is a major source of global warming, as a pollutant subject to regulation. Technology is available to substantially reduce emissions of all 3 pollutants, and updated standards are needed to put this technology in place.

Before suing EPA to comply with the NSPS review requirement, an interested party must give a notice of intent to sue. EPA then has 60 days to act and may not be sued if it commences the required review. The states that have filed the recent notice do not believe EPA will voluntarily undertake the required review because six months ago the Sierra Club filed a notice of intent on the same issue and EPA has not responded in any way.

The petitioning states believe there is a strong likelihood of success on the merits. The more difficult task will be to have EPA conduct a meaningful review and then promulgate appropriate, updated NSPS for electric utilities. The petitioning states intend to take an active role in this review process.

The importance of updating the NSPS for utilities has become especially important now that EPA has changed the New Source Review (NSR) program. Under the NSR program, new major sources of air pollution are required to utilize state-of-the-art methods to control emissions. In conducting a review of control alternatives under the NSR program, sources are frequently required to control emissions beyond levels that exist in environmental standards, such as NSPS, because such standards are frequently out of date and not in line with current technology. Because EPA has relaxed the applicability requirements in the NSR program, it is imperative that underlying standards such as NSPS are frequently reviewed and kept up to date.

Given the discussions at the February Board meeting about the difficulty Wisconsin is facing in meeting the 1-hr and 8-hr ozone standards, the outcome of the upcoming litigation could have significant implications for the state. To obtain the perspectives of the wide variety of parties that have an interest in this matter, how the Department should respond to this situation will be a topic for discussion at the meeting of the Clean Air Act Task Force (CAATF) on March 13, 2003. Available options include not getting directly involved or recommending to the Governor that he ask the Attorney General to file a 60 day notice.

I'll update you on the discussions at the CAATF meeting as soon as practicable. In the interim, if you have any questions or comments on this matter, please contact Jay Hochmuth at 267-9521 or Lloyd Eagan at 266-0603.

cc: Jay Hochmuth – AD/5
Lloyd Eagan – AM/7